428-A

U.S. Department of Labor

Office of Administrative Law Judges
800 K Street, N.W.
Washington, D.C 20001-8002

June 14, 1995

****
In the Matter of: *
*
PARTICIPANTS IN THE OSHA HEARING *
ON THE PROPOSED STANDARD ON INDOOR *
AIR QUALITY *
(Docket No. H-122) *
*
****

OSHA
DOCKET OFFICER
DATE SEP 1 1995

Order Extending Post Hearing Comment Period

Pursuant to the provisions of 29 CFR Section 1911.16, at the end of the public hearing on OSHA's proposed indoor air quality standard, I set a two part post hearing comment period. The first part of the comment period was to be until July 3, 1995, followed by the second part wherein the record would remain open until September 11, 1995.

The Occupational Safety and Health Administration and other parties have requested that I extend the post hearing comment period, believing that such extension will positively contribute to the building of a more complete record in this proceeding. This request is granted.

Accordingly, the first part of the post hearing comment period is hereby extended until September 1, 1995. In view of this extension, it is necessary to also extend the second part of the post hearing comment period. The second part of the post hearing comment period is hereby extended until November 13, 1995.

Anyone who has filed a timely Notice of Intention to Appear is eligible to file post hearing comments and briefs. During the first part of the post hearing comment period the record remains open for the receipt of written information and additional data. Such information would include answers to questions you were asked at the hearing by the OSHA panel or by others in the audience, additional scientific evidence, and recommendations and supporting reasons which you believe to be relevant to the subject of the hearing.

During the post hearing brief period, which will close on November 13, 1995, the record will remain open for the receipt of position statements, briefs, recommendations and rebuttal of material that has been submitted during the post hearing comment period.

It is neither necessary nor desirable to submit information as a post hearing comment which is already in the record.

Post hearing comments and briefs should be labelled as such and sent in quadruplicate to the Docket Office, Docket No. H-122, Room N-2624, U. S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, N. W. , Washington, D.C. 20210.

Transcript Corrections

I have also decided to extend the period for filing motions to correct the transcript.

The Rules of Procedure for Promulgating . . . Occupational Safety and Health Standards (29 CFR 1911.15(b)(3)) require that the hearing shall be reported verbatim. Those testifying at the hearing should examine a transcript of their own testimony (or cross examination, as the case may be) for reporting errors. Any errors shall be called to my attention, with a motion to correct.

Copies of motions to correct shall be sent by the party wishing to correct the transcript to: Judge Vittone, Susan Sherman, the Docket Office, and the person with whom the dialogue containing the error took place. These motions must be made by the close of the first post hearing comment period, September 1, 1995. Replies to motions to correct must be filed by October 6, 1995 and sent to those listed in the previous sentence.

This procedure shall only be used when there is a reporting mistake, such as wrongly identifying the speaker, inadvertently deleting the word "not" from a sentence, etc. Inartfully phrased or erroneous answers may not be corrected using the procedure outlined here--these things were actually said and therefore it would be improper to claim they were a typographical error. While inartfully phrased or erroneous answers cannot be remedied by correcting the transcript, they may be addressed in post hearing comments.

John M. Vittone

JOHN M. VITTONE
Acting Chief Administrative
Law Judge

428G-2

U.S. Department of Labor

Office of Administrative Law Judges
800 K Street, N.W.
Washington, D.C. 20001-8002

August 29, 1995

In the matter of:

PARICIPANTS IN THE OSHA HEARING ON THE PROPOSED STANDARD ON INDOOR AIR QUALITY
(Docket No. H-122)

ORDER DENYING REQUESTS FOR EXTENSION OF COMMENT PERIOD

Pursuant to the provisions of 29 C.F.R. § 1911.16, at the end of the public hearing in this matter, I set a two part post hearing comment period. The first part of the comment period was to be until July 3, 1995, followed by the second part wherein the record would remain open until September 11, 1995.

The Occupational Safety and Health Administration and other parties requested that an extension of the post hearing comment period be granted. Accordingly, on June 14, 1995, an Order was issued extending the first part of the post hearing comment period to September 1, 1995 and the second part until November 13, 1995.

Recently I have received five requests that the comment period again be extended by sixty (60) days. By filing dated August 25, 1995, the Occupational Safety and Health Administration has objected to the requested extension. Since there has already been one extension of the comment period, another will only be granted for good cause.

The Michigan Licensed Beverage Association, the Ohio Licensed Beverage Association and Chwat & Company, Inc. have all requested a sixty day extension of the public comment period without explanation. Since no cause was stated for their request, these three requests do not support granting a further extension.

The Clean Air Device Manufacturers Association statements contained in their request that they are a fairly new organization and that it is taking a long time to integrate

thirty member responses into one unified version are also not adequate to warrant another extension. As pointed out in OSHA's response to the motions, this organization has had close to one year to prepare its filing.

Finally, a rather lengthy request was received from ChemRisk, in which their representative, William Butler requests a sixty day extension to the comment period as well as the briefing period to finish analyses of two epidemiologic data sets from the National Health and Nutrition Examination Survey III and the National Center for Health Statistics. Dr. Butler has stated that both of these organizations will be submitting further data and information regarding their studies by the present deadline, September 1, 1995. OSHA has stated that the information to be submitted is merely an update of the prior information submitted and does not substantially alter the prior findings. As represented by both ChemRisk and OSHA, these organizations intend to submit this information in accordance with the public comment deadline. One of the purposes of the second portion of the comment period is to provide interested parties with the opportunity to rebut the information contained in submissions by others. ChemRisk will have the second portion of the comment period to respond to anything new in the findings of these two organizations. Therefore, Chemrisk also has not provided sufficient cause for the comment period to be extended.

Accordingly, the five requests for extension of the public comment period are hereby **DENIED**. The deadline for submissions in the first portion of the public comment period is September 1, 1995 and for the second portion is November 13, 1995.

JOHN M. VITTONE
Acting Chief Administrative Law Judge

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U.S. Department of Labor

Office of Administrative Law Judges
800 K Street, N.W.
Washington, D.C. 20001-8002

August 29, 1995

The Docket Office
Docket No. H-122
Room N-2625
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

OSHA
DOCKET OFFICER
DATE AUG 29 1995

Dear Docket Clerk:

Enclosed is a copy of an Order issued by Judge Vittone in conjunction with the Proposed Standard on Indoor Air Quality, Docket No. H-122 to be associated with the docket. If you have any questions, please feel free to contact me at (202) 565-5341. Thank you for your cooperation.

Sincerely,

Sharon L. Shepherd

Sharon L. Shepherd
Attorney Advisor to Judge John Vittone

Enclosure

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U.S. Department of Labor

Office of Administrative Law Judges
800 K Street, N.W.
Washington, D.C. 20001-8002

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October 24, 1995

OSHA
DOCKET OFFICER
DATE OCT 27 1995
TIME

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OCT 25 2 50 PM '95
SOL/OSHD

In the Matter of:

PARTICIPANTS IN THE OSHA HEARING ON THE PROPOSED STANDARD ON INDOOR AIR QUALITY
(Docket No. H-122)

ORDER GRANTING EXTENSION FOR FILINGS IN SECOND PART OF POST-HEARING COMMENT PERIOD

The date for filing of documents in the second part of the post hearing comment period is set for November 13, 1995. I have received motions for extension of the deadline by 90 to 120 days from Phillip Morris, R.J. Reynolds, ChemRisk, the Tobacco Institute, the Chelsea Group, Limited and the Hotel Employees and Restaurant Employees International Union. The Department of Labor has responded by objecting to the 120 day extension but stating that it would agree to an extension of 41 days due to its recognition of some confusion regarding the workings of the docket office.

In anticipation of a budgetary crisis for the U.S. Government that would fall at the same time as the deadline for submission of November 13, 1995, an extension of time is necessary. However, the 41 day extension agreed to by the Department of Labor would put the deadline in the middle of the holidays at the end of December which would be an inconvenient time for the filing of a large number of documents. Accordingly, IT IS ORDERED that the deadline for submission of filings in the second part of the post-hearing comment period is extended to January 16, 1996.

JOHN M. VITTONE
Acting Chief Administrative Law Judge

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U.S. Department of Labor

Office of Administrative Law Judges
800 K Street, N.W.
Washington, D.C. 20001-8002

OSHA
DOCKET OFFICER
DATE NOV 3 1995
TIME

492 C

RECEIVED
OCT 31 11 23 AM '95
SOL/OSHD

October 26, 1995

In the Matter of:

PARTICIPANTS IN THE OSHA HEARING ON THE PROPOSED STANDARD ON INDOOR AIR QUALITY
(Docket No. H-122)

NOTICE TO THE HOTEL EMPLOYEES & RESTAURANT EMPLOYEES INTERNATIONAL UNION

All organizations and persons who wanted to participate in the hearing and comment phase of this rulemaking were required to file notices of intention to appear and comments with the OSHA office by June 20, 1994. 59 Fed. Reg. 15,968 (April 5, 1994). There is no record of the Hotel Employees & Restaurant Employees International Union filing a notice of intention by that deadline. Accordingly, your organization is not an official participant, and therefore, does not have standing to request an extension of time to the comment period and is not authorized to participate in the comment period of the rulemaking referenced above. Your organization may submit comments in the late comment period. However, since your organization is not an official participant, OSHA will be free to determine what weight it will give any submission.

John M. Vittone

JOHN M. VITTONE
Acting Chief Administrative Law Judge

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U.S. Department of Labor

Office of Administrative Law Judges
800 K Street, N.W.
Washington, D.C. 20001-8002

4920

JAN 11 1996

OSHA
DOCKET OFFICER
DATE JAN 11 1996
TIME

In the Matter of

PARTICIPANTS IN THE OSHA HEARING ON THE PROPOSED STANDARD ON INDOOR AIR QUALITY (DOCKET NO. H-122)

ORDER GRANTING EXTENSION FOR FILINGS IN SECOND PART OF POST-HEARING COMMENT PERIOD

Pursuant to my order of October 24, 1995, the deadline for submission of filings in the second part of the post-hearing comment period will expire on January 16, 1996. In view of the period of time covered by the budgetary furlough and the snow days, I am aware that participants have not had full access to the materials filed in this proceeding in the docket section at the Frances Perkins Building. I have decided to extend the filing period for the post-hearing comment period to cover the periods that the Docket Room was not available to the participants. Accordingly, the deadline for submission of filings in the second part of the post-hearing comment period is extended to Friday, February 9, 1996.

John M. Vittone

JOHN M. VITTONE
Acting Chief Administrative Law Judge

20463954 87

WENDELL H. FORD
KENTUCKY

COMMITTEES:
COMMERCE, SCIENCE, AND TRANSPORTATION
ENERGY AND NATURAL RESOURCES
RULES AND ADMINISTRATION

United States Senate

WASHINGTON, DC 20510-1701

November 14, 1995

Dear Joe:

Attached is the most recent Congressional Research Service (CRS) Report on the plausibility of health risks stemming from exposure to what is commonly referred to as "Passive Smoke, Second Hand Smoke or Environmental Tobacco Smoke (ETS)." This is the latest in a series of reports by several different high level specialists at CRS which have all led to the same conclusion: there is no scientific justification for smoking bans or *defacto* bans like the proposed rule issued by your agency some months ago.

This report is titled Environmental Tobacco Smoke and Lung Cancer Risk, and it represents a comprehensive look at this subject as well as an examination of purported risks for heart disease. While many agenda driven researchers have picked and chosen from only the studies that support their views, CRS, an agency which is unquestioned in its objectivity, has, during a lengthy 20 month review, rigorously examined all of the data on this controversial topic. Its conclusion is that the Occupational Safety and Health Administration (OSHA) risk assessment as stated in its proposed rule is incorrect. While CRS is prohibited under its rules from issuing specific policy recommendations, the evidence of the study is clear and is worth restating: there is no scientific justification for the current regulatory action being sought by OSHA.

The CRS study calls into question the very underpinnings that form the basis of Environmental Protection Agency (EPA) and OSHA claims regarding the dangers of second hand smoke. EPA has claimed since the release of its much criticized report back in January of 1993, that there is no safe level of exposure to ETS. However, CRS directly refutes this assertion. Furthermore, it finds that the only reasonable chance of risk comes in extreme situations and even in those cases the findings are uncertain and in need of further research. This, in my view, is the scientific equivalent of the townspeople screaming out "The emperor has no clothes."

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DISTRICT OFFICES:
343 WALLER AVENUE
LEXINGTON, KY 40504

1072 NEW FEDERAL BUILDING
LOUISVILLE, KY 40202
(502) 582-6261

19 U.S. POST OFFICE AND COURTHOUSE
COVINGTON, KY 41011
(606) 401-7928

305 FEDERAL BUILDING
OWENSBORO, KY 42...
(502) 68...-5158

In light of the seriousness of the findings of this study and the reputation of the organization that is so questioning OSHA actions, I am calling on you to publicly call for a reopening of your hearings on the proposed OSHA rule. I would be most interested in your views on this historic study and its implications for all government coerced smoking bans.

Sincerely,

Joseph A. Dear
Assistant Secretary for Occupational
Safety and Health
Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Enclosure

cc: Leon E. Panetta, Chief of Staff
Robert B. Reich, Secretary of Labor

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FOR IMMEDIATE RELEASE
November 14, 1995

Contact: Mark L. Day
(202) 224-1156

FORD CALLS FOR REOPENING OF OSHA HEARINGS ON SMOKING BANS

WASHINGTON-- Citing a new report from the Congressional Research Service (CRS) that highly questions prior assumptions on second hand smoke, U.S. Senator Wendell Ford (D-KY) today called upon the Occupational Safety and Health Administration (OSHA) to reopen hearings on proposed smoking bans.

"This report from CRS -- a nonpartisan and objective organization -- shows there is absolutely no scientific justification for smoking bans or defacto bans like the proposed rule coming out of OSHA," Ford said. "These bureaucratic agencies are only pursuing an agenda to punish citizens who exercise the personal right to smoke."

He continued, "There is no scientific evidence for their agenda, and I think it's time to rethink these proposed rules on workplace and public smoking. The proposals will cost billions to implement and will provide little, if any, benefit to the public. For months they have manipulated data to make their case, but now we find that data simply is not there."

The CRS report released today, "Environmental Tobacco Smoke and Lung Cancer Risk," calls into question claims by the Environmental Protection Agency (EPA) and OSHA on the dangers of second hand smoke. The CRS report refutes EPA's assertion that there is no safe level of Environmental Tobacco Smoke (second hand smoke). According to its independent study, CRS finds that the only reasonable chance of risk comes in extreme situations and even those cases are in need of more scientific research.

"In the twenty months CRS has conducted this review, their work finds no basis for continuing with forced smoking bans. Given this information, I think it's time for Big Brother government to get out of the lives of working adults and let them make their own choices about using tobacco," Ford said.

Last year OSHA proposed rules that would require workplaces, including restaurants, to take the costly step of constructing separately ventilated smoking rooms (where absolutely no work can take place) or completely banning smoking in the entire facility.

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EPA/OSHA FINDINGS ON PASSIVE SMOKING

Mr. FORD. Mr President, the Congressional Research Service [CRS] released a long awaited report today that calls into quesrion the validity of claims that passive smoking presents a risk to nonsmokers. It also highlights questions on the validity of the science behind the Environmental Protection Agency's [EPA] and subsequently the Occupational Safety and Health Administration [OSHA] findings on the effects of secondhand smoke. In 1993, the EPA released a report classifying passive smoke a "class A carcinogen." This EPA report has been the basis for numerous actions taken to limit smoking in public places with the most dramatic example being the OSHA proposed smoking ban in all workplaces across the United States.

However, this CRS report, indicates well placed skepticism on the methods used by OSHA to justify the need for such draconian and invasive policies as the one espoused by this agency. CRS also questions the very harm of second hand smoke. It found fault with the EPA's promise that there is no safe level of exposure to passive smoke, and the conclusions that OSHA drew from a limited number of studies, a practice which clearly undercuts the validity of the OSHA findings.

The report released today is but the latest in a series by different high level specialists at CRS. Every report has led to the same conclusion: There is no scientific justification for smoking bans or de facto bans like the one issued by OSHA some months ago. In previous reports CRS stated unequivocally that, "the epidemiological evidence for passive-smoking-related disease is weak." It has followed this statement up with today's report which represents a comprehensive look at this subject as well as an examination of purported risks for heart disease.

While many agenda driven researchers have picked and chosen from only the studies that support their views, CRS, an agency which is unquestioned in its objectivity, has, during a lengthy 20 month review, rigorously examined all of the data on this controversial topic. Its conclusion is that the OSHA risk assessment as stated in its proposed rule is incorrect. While CRS is prohibited under its rules from issuing specific policy recommendations, the evidence of the study is clear and bears repeating: There is no scientific justification for the current regulatory action being sought by OSHA.

The CRS study calls into question the very underpinnings that form the basis of Environmental Protection Agency [EPA] and OSHA claims regarding the dangers of second hand smoke. EPA has claimed since the release of its much criticized report back in January 1993, that there is no safe level of exposure to ETS. However, CRS directly refutes this assertion. Furthermore, it finds that the only reasonable chance of risk comes in extreme situations and even in those cases the findings are uncertain and in need of further research. This, in my view, is the scientific equivalent of the townspeople screaming out "The emperor has no clothes."

In light of the seriousness of the findings of this study and the reputation of the organization that is so questioning OSHA actions, I am calling on OSHA to reopen its hearings on the proposed rule and to re-evaluate the justification for the rule in the first place. I respectfully suggest to my colleagues that this historic study undermines the premise for all government coerced smoking bans.

United States Senate

WASHINGTON, DC 20510

November 17, 1995

Mr. Joe Dear
Assistant Secretary
Occupational Safety and Health
Administration
Frances Perkins Building, Room S-2315
200 Constitution Avenue, NW
Washington, D.C. 20210

Dear Mr. Dear:

The Congressional Research Service (CRS) has just completed a report entitled "Environmental Tobacco Smoke and Lung Cancer Risk". The report concentrates on possible health effects of environmental tobacco smoke (ETS).

The report represents a detailed examination of the ETS issue, raising serious issues about reports by the Environmental Protection Agency (EPA) and Occupational Safety and Health Administration (OSHA) which have advocated strong antismoking measures. CRS research specialists conclude: there is no scientific justification for smoking bans, defacto bans, or regulatory actions such as the proposed rule issued (April 5, 1994) by your agency.

The study challenges critical assumptions made by your agency to support your proposed smoking ban in all U.S. workplaces. CRS also notes that if OSHA had conducted an analysis of all of the available studies on smoking in the workplace, it would likely have found no increased cancer risk due to ETS. The report states, "Had OSHA performed a meta-analysis, it seems likely that it would have found no increased lung cancer risk from occupational ETS exposure."

As you know, CRS provides objective and impartial research and analysis for Members of Congress. We are interested in your views on this important research study and its implications for all forced smoking bans by the Federal government.

Sincerely,

2046395493

PHILIP MORRIS

U.S.A.

RESEARCH CENTER, RICHMOND, VIRGINIA 23261-6583

RICHARD A. CARCHMAN, PhD.
DIRECTOR
SCIENTIFIC AFFAIRS

P O BOX 26583
(804) 274-5794
FAX (804) 274-3982

509

February 7, 1996

OSHA
DOCKET OFFICER
DATE FEB 8 1996
TIME

Docket Office
Docket No. H-122
Room N-2625
U.S. Department of Labor
Occupational Safety and Health Administration
200 Constitution Avenue N.W.
Washington, D.C. 20210

Re: OSHA Docket No. H-122, Submittal of Post-Hearing "Position Statements, Briefs, Recommendations and Rebuttal of Material Submitted During the Post Hearing Comment Period"

Dear Docket Officer:

Pursuant to the Orders of the Honorable John M. Vittone, Acting Chief Administrative Law Judge, Philip Morris U.S.A. is submitting to OSHA Docket H-122, in quadruplicate, its Post-Hearing Submittal of "Position Statements, Briefs, Recommendations and Rebuttal of Material that Has Been Submitted During the Post-Hearing Comment Period" (the "Brief").

On April 5, 1994, the U.S. Occupational Safety and Health Administration (OSHA) published a Notice of Proposed Rulemaking (59 Fed. Reg. 15,968) on air quality in indoor workplaces ("Proposed Rule"). The Proposed Rule would apply to some six million workplaces and would require employers in enclosed industrial and nonindustrial worksite to prohibit smoking indoors or restrict smoking to an enclosed room with separate exhaust and negative pressurization. No employee could be compelled to enter a designated smoking room in the performance of normal work activities, and no work could be performed in a smoking room except cleaning and maintenance work (but only when smoking is not taking place).

As currently drafted, the smoking provisions of the Proposed Rule would not exempt any business, including restaurants, hotels, and bars. For example, as acknowledged by Assistant Secretary of Labor Joseph Dear in a March 1994 OSHA press conference, the Proposed Rule would amount to a flat ban on smoking in restaurants. Thus, employees (i.e., waiters, waitresses, and other servers) would not be allowed to service patrons in any areas where smoking occurs.

As explained in much greater detail in our Brief, the record clearly and unquestionably establishes that OSHA's current Proposed Rule is flawed and cannot be

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supported by the evidence in the record. Some of the serious problems with the Proposed Rule that are demonstrated in the record are as follows:

- OSHA has not shown that ETS at exposure levels found in the workplace poses a significant risk of material health impairment to employees.

- OSHA cannot demonstrate that its proposed zero tolerance of nonsmoker exposure to ETS in indoor workplaces is reasonably necessary or appropriate to reduce a significant risk of material health impairment to employees.

- OSHA's proposal to ban workplace smoking except in specially designed smoking rooms is not justified because other, less drastic alternatives, which OSHA did not adequately consider, can address any workplace smoking issues.

- OSHA's attempt to single out ETS, when almost all ETS constituents are found in indoor air from other sources, is unjustified.

- OSHA significantly underestimated the burden and costs that U.S. businesses and federal, state and local governments would incur if the Proposed Rule is implemented.

It seems clear that OSHA cannot justify or support its current Proposed Rule on indoor air quality and indoor smoking. In light of the immense public record generated by the Proposed Rule, OSHA must thoroughly evaluate the bases for its Proposed Rule and should realize that a reassessment of its position is in order. In view of the numerous, extensive and fundamental flaws in OSHA's Proposed Rule as revealed by the public comment process, OSHA should, at a minimum, develop and publish for comment a revised proposal that comprehensively addresses indoor air quality as an aggregate whole rather than unfairly singling out ETS. Such a proposal should provide U.S. businesses with a thorough, yet flexible, approach to addressing indoor air quality issues, including issues associated with workplace smoking, in a manner that accommodates the interests of all concerned, including employers, nonsmoking employees, and employees who choose to smoke. In addition, OSHA should develop and publish a revised proposal in order to adequately address the significant information gaps found in the current proposal, especially those relating to the proposal's economic effect upon small businesses and other entities.

At a press conference on March 25, 1994, Department of Labor Solicitor Tom Williamson assured the public as follows:

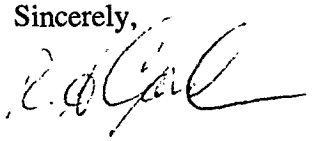
> The reason we have a comment period is to try to inform ourselves about the perspectives of various different interests. I think it would be premature to announce before we've gotten the comments what degree of flexibility we would respond with. I think that depends on the newness of the information and other merits of the comment that are actively provided.

After over 100,000 written comments, six months of public hearings, and numerous post-hearing comments and briefs, it is up to OSHA to responsibly review the

record that the public has submitted. If OSHA does this comprehensively and objectively, the Proposed Rule must be rejected and the issues studied further. If OSHA takes these steps it will conclude that a revised Proposed Rule should eventually be developed and submitted for public review and comment.

If there are any questions with regard to our submission, please contact me. Philip Morris will be glad to consider any request for additional input or further clarification.

Sincerely,



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